

Concessions, Government contracts, Grant programs—transportation, Minority businesses, Reporting and recordkeeping requirements.

49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant programs—transportation, Highways and roads, Mass transportation, Minority businesses, Reporting and recordkeeping requirements.

Issued this 8th day of January, 1999, at Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department amends 49 CFR subtitle A as follows:

PART 23—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

1. Revise the heading of 49 CFR part 23 as set forth above.

2. Revise the authority citation for 49 CFR part 23 to read as follows:

Authority: 42 U.S.C. 200d *et seq.*; 49 U.S.C. 47107 and 47123; Executive Order 12138, 3 CFR, 1979 Comp., p. 393.

Subparts A, C, D, and E—[Removed and Reserved]

3. Remove and reserve subparts A, C, D, and E of part 23.

§ 23.89 [Amended]

4. Amend § 23.89 as follows:

a. In the definition of “disadvantaged business,” remove the words “§ 23.61 of subpart D of this part” and add the words “49 CFR part 26”; and remove the words “§ 23.61” in the last line of the definition and add the words “49 CFR part 26”.

b. In the definition of “small business concern,” paragraph (b), remove the words “§ 23.43(d)” and add the words “§ 23.43(d) in effect prior to March 4, 1999 (See 49 CFR Parts 1 to 99 revised as of October 1, 1998.)”.

c. In the definition of “socially and economically disadvantaged individuals,” remove the words “§ 23.61 of subpart D of this part” and add “49 CFR part 26”.

§ 23.93 [Amended]

5. Amend § 23.93(a) introductory text by removing the words “§ 23.7” and adding the words “§ 26.7”.

§ 23.95 [Amended]

6. Amend § 23.95(a)(1) by removing the words “based on the factors listed in § 23.45(g)(5)” and adding the words

“consistent with the process for setting overall goals set forth in 49 CFR 26.45”.

7. In addition, amend § 23.95 as follows:

a. In paragraph (f)(1), remove the words “§ 23.51” and add the words “49 CFR part 26, subpart E”;

b. In paragraph (f)(2), remove the words “Except as provided in § 23.51(c), each” and add “Each”;

c. Remove paragraph (f)(5);

d. In paragraph (g)(1), remove the words “§ 23.53” and add the words “49 CFR part 26, subpart D”.

§ 23.97 [Amended]

8. Amend § 23.97 by removing the words “§ 23.55” and adding the words “49 CFR 26.89”.

§ 23.11 [Removed]

9. Remove § 23.111.

10. Add a new 49 CFR part 26, to read as follows:

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Subpart A—General

Sec.

26.1 What are the objectives of this part?

26.3 To whom does this part apply?

26.5 What do the terms used in this part mean?

26.7 What discriminatory actions are forbidden?

26.9 How does the Department issue guidance and interpretations under this part?

26.11 What records do recipients keep and report?

26.13 What assurances must recipients and contractors make?

26.15 How can recipients apply for exemptions or waivers?

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

26.21 Who must have a DBE program?

26.23 What is the requirement for a policy statement?

26.25 What is the requirement for a liaison officer?

26.27 What efforts must recipients make concerning DBE financial institutions?

26.29 What prompt payment mechanisms may recipients have?

26.31 What requirements pertain to the DBE directory?

26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

26.35 What role do business development and mentor-protégé programs have in the DBE program?

26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

Subpart C—Goals, Good Faith Efforts, and Counting

26.41 What is the role of the statutory 10 percent goal in this program?

26.43 Can recipients use set-asides or quotas as part of this program?

26.45 How do recipients set overall goals?

26.47 Can recipients be penalized for failing to meet overall goals?

26.49 How are overall goals established for transit vehicle manufacturers?

26.51 What means do recipients use to meet overall goals?

26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

26.55 How is DBE participation counted toward goals?

Subpart D—Certification Standards

26.61 How are burdens of proof allocated in the certification process?

26.63 What rules govern group membership determinations?

26.65 What rules govern business size determinations?

26.67 What rules govern determinations of social and economic disadvantage?

26.69 What rules govern determinations of ownership?

26.71 What rules govern determinations concerning control?

26.73 What are other rules affecting certification?

Subpart E—Certification Procedures

26.81 What are the requirements for Unified Certification Programs?

26.83 What procedures do recipients follow in making certification decisions?

26.85 What rules govern recipients' denials of initial requests for certification?

26.87 What procedures does a recipient use to remove a DBE's eligibility?

26.89 What is the process for certification appeals to the Department of Transportation?

26.91 What actions do recipients take following DOT certification appeal decisions?

Subpart F—Compliance and Enforcement

26.101 What compliance procedures apply to recipients?

26.103 What enforcement actions apply in FHWA and FTA programs?

26.105 What enforcement actions apply in FAA Programs?

26.107 What enforcement actions apply to firms participating in the DBE program?

26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

Appendix A to part 26—Guidance Concerning Good Faith Efforts

Appendix B to part 26—Forms [Reserved]

Appendix C to part 26—DBE Business

Development Program Guidelines

Appendix D to part 26—Mentor-Protégé Program Guidelines

Appendix E to part 26—Individual Determinations of Social and Economic Disadvantage

Authority: 23 U.S.C. 324; 42 U.S.C. 2000d *et seq.*; 49 U.S.C 1615, 47107, 47113, 47123;